

NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES

WATER COUNCIL

RECEIVED

Docket No. 03-10-WC

JUL 22 2005

In the Matter of:
Conservation Law Foundation
In Re: Water Quality Certificate #2003-001

INTERVENOR'S OBJECTION TO
CONSERVATION LAW FOUNDATION'S
MOTION TO COMPEL

NOW COMES Endicott General Partnership, the applicant in the above matter, hereinafter "Endicott," who objects to the Conservation Law Foundation's ("CLF's") Motion to Compel stating as follows:

1. That is clear from a review of the CLF's Witness and Exhibit List dated July 18, 2005, as well as the Department's response to the CLF's Motion to Compel, that the CLF already has, or will have, in its possession all of the information necessary to reasonably pursue the within appeal.

2. There is no provision in the Council Rules for interrogatories or depositions, and such rule is consistent with the New Hampshire Supreme Court's decision that depositions of agency staff are not required in administrative proceedings where cross-examination is available. Appeal of Portsmouth Savings Bank, 123 N.H. 15 (1983).

3. The permitting history of Endicott's project before DES regulators commenced on June 12, 2002 and has resulted in three hearings before the New Hampshire Wetlands Bureau, a favorable decision of the New Hampshire Wetlands Council, and a favorable ruling of the New Hampshire Superior Court rendered on July 7, 2005.

4. The CLF has participated in all of these proceedings, and an adequate record exists for a reasonable review of the pending CLF appeal.

5. That Endicott joins in the Objection to the Motion to Compel filed by the Department of Environmental Services.


WHEREFORE, Endicott respectfully moves and prays:

- A. That the Motion to Compel be denied; and
- B. For such other and further relief as may be just.

Respectfully submitted,

ENDICOTT GENERAL PARTNERSHIP
By its attorneys,
McNEILL, TAYLOR & GALLO, P.A.

Dated: July 22, 2005

By  **COPY**
Malcolm R. McNeill, Jr.

CERTIFICATE OF SERVICE

I hereby certify that the within has this date been forwarded by first-class mail, postage prepaid to Thomas F. Irwin, Esq., Paul M. Currier, Administrator IV, Watershed Management Bureau, and Jennifer J. Patterson, Esq.

 **COPY**
Malcolm R. McNeill, Jr.